



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
OFFICE OF THE CLERK
500 PEARL STREET
NEW YORK, NEW YORK 10007

RUBY J. KRAJICK
CLERK OF COURT

May 19, 2023

BY ECF AND OVERNIGHT MAIL

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Re: Noel et al v. City Of New York, 15-cv-5236 (LTS)

Notice Concerning Waiver of Judicial Disqualification

Dear Counsel,

I have been contacted by Chief Judge Swain, U.S.D.J., who has presided over the above-named case since it was filed on July 7, 2015. Chief Judge Swain informed me that it has been brought to her attention that one of her close family members has entered the City of New York's affordable housing lottery program (the "Lottery"). Because at least one of this family member's applications is for a property in a Community District ("CD") in which both the family member's address and the housing project are located, the family member will benefit from the City's community preference policy ("CP Policy").

Since this circumstance only came to Chief Judge Swain's attention on May 14, 2023, it neither affected nor impacted her prior decisions in this case. Nor does Chief Judge Swain anticipate that the circumstance will affect or impact her future decisions in this case. However, this circumstance may be grounds for recusal under the [Code of Conduct for United States Judges](#). Therefore, Chief Judge Swain directed that I notify the parties of the potential conflict.

Canon 3D of the Code of Conduct provides (with exceptions not pertinent to this case) that when a judge is disqualified in a proceeding because "the judge's impartiality might reasonably be questioned," the judge may participate in the proceeding only if all the parties and lawyers, after notice of the basis for the disqualification, have an opportunity to confer outside of the presence of the judge and all agree in writing or on the record to waive the disqualification under a procedure independent of the judge's participation.

Unless a waiver is obtained from all parties and all counsel, Chief Judge Swain intends to disqualify in this proceeding because of these circumstances. If you and your client(s) wish to waive the judge's disqualification, a letter to that effect from you and from your client(s) must be sent to Ruby J. Krajick, Clerk of Court, within ten (10) days of the date of this Notice. A sample letter is enclosed. The letter should be signed and submitted by the attorney of record only after consultation with all of his or her clients in the above-styled and numbered cause.

THE LETTERS SHOULD NOT BE SENT TO THE JUDGE AND COPIES SHOULD NOT BE SENT TO OTHER COUNSEL. DO NOT E-FILE YOUR LETTER(S). SUBMIT LETTERS DIRECTLY TO THE CLERK OF COURT.

If all parties submit such letters, this Notice and all responses will be made part of the record, as required by Canon 3D, and the judge will continue participation in the proceeding. If waivers are not received on behalf of all parties and their respective counsel, this Notice and any responses will be kept under seal by the Clerk and not shown to the judge, nor will the judge be informed of the identity of any party or lawyer who declined to waive the disqualification. If the disqualification is not waived, the case will be reassigned to another judge.

Signed,

A handwritten signature in black ink, appearing to read 'Ruby J. Krajick', with a stylized flourish at the end.

Ruby J. Krajick
Clerk of Court

cc: Hon. Laura Taylor Swain, Chief U.S.D.J.

SAMPLE Waiver of Disqualification Letter

NOTICE TO ATTORNEYS: DO NOT E-FILE THIS FORM
SUBMIT DIRECTLY TO THE CLERK OF COURT

From: [*Insert Name and Address of Attorney*]

To: Ruby J. Krajick
Clerk of Court
United States District Court
Southern District of New York
Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York, NY 10007

Date: [*Insert date*]

Re: Noel et al v. City Of New York, 1:15-cv-5236 (LTS)

Dear Ms. Krajick:

I have consulted with my client(s), [*Insert client name(s)*] which are all of the clients that I represent in the above-styled and numbered cause, concerning the Clerk's Notice that Chief Judge Swain intends to disqualify herself from this case because her impartiality might reasonably be questioned.

My client(s) and I hereby waive this disqualification. We are willing to proceed forward with Chief Judge Swain presiding.

Pursuant to Canon 3D of the Code of Conduct, I am submitting this letter to the Clerk of Court, but I am not copying Chief Judge Swain, nor am I copying the other counsel of record or the other parties.

Yours truly,

Signature
[*Insert attorney's name*]
Attorney of Record, on behalf of
[*Insert client name(s)*]